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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO.       |
|--|-------------|----------------------|-------------------------------|------------------------|
| 10/765,237   | 01/26/2004  | Larry Pack           | PAC.00001                     | 1742                   |
| <div>7590 07/30/2007<br/>Warn, Burgess &amp; Hoffmann, P.C.<br/>P.O. Box 70098<br/>Rochester Hills, MI 48307</div> |             |                      |                               |                        |
|  |             |                      | EXAMINER<br>COMSTOCK, DAVID C |                        |
|  |             |                      | ART UNIT<br>3733              | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>07/30/2007       | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/765,237

Applicant(s)

PACK, LARRY

Examiner

David Comstock

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34, 36-63 and 66-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 59-63, 66-84 and 87 is/are allowed.
- 6) ☒ Claim(s) 1-34, 36-58, 85 and 86 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-34, 36-58, 85 and 86 are rejected under 35 U.S.C. 102(b) as being anticipated by Martinotti (5,766,175).

Martinotti discloses a reconstruction plate 20 that can comprise numerous shapes including attachment member portions and a support member portion (see Figs 1-11). The device comprises areas having a plurality of apertures 1, 2, 3 for bone screws. The plate is fastened to an anterior aspect of a fractured anatomical structure and the support member is operable to provide support to a posterior aspect of the anatomical structure during loading of the structure. The attachment member is manipulated to curve it about an anatomical location (Fig. 8). The support member extends angularly from the attachment member. The support member is in proximity to a posterior aspect of an acetabulum and an acetabular dome (Fig. 8).

Claims 1-34, 36-58, 85 and 86 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Robioneck (5,326,367).

Robioneck discloses a plate 10 including attachment member and support portions 12, 14 (see Figs. 1-4). The device comprises areas having a plurality of

apertures, e.g. 22, for bone screws. The plate is fastened to an anterior aspect of a fractured anatomical structure and the support member is operable to provide support to a posterior aspect of the anatomical structure during loading of the structure (see Figs. 2 and 3). The attachment member is manipulated to curve it about an anatomical location. The support member extends angularly from the attachment member. The support member is in proximity to a posterior aspect of an acetabulum and an acetabular dome.

***Allowable Subject Matter***

Claims 59-63, 66-84 and 87 are allowed.

***Response to Arguments***

Applicant's arguments filed 18 May 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that Martinotti or Robioneck do not disclose the invention set forth in the amended claims, the devices of both references are capable of performing the use set forth in the claims. It is noted that in claims directed to an apparatus, there must be a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Here, the structure comprises a support member having a support surface spaced from an attachment member, as shown in the figures. The solid structure of each device, per se, is free from apertures. Moreover, both devices are capable of being

positioned adjacent a quadrilateral plate of an acetabulum and of being configured or positioned at an angle. If the prior art structure is capable of performing the intended use, as it is here, then it meets the claim.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Duncan et al. (5,690,631), e.g. see Fig. 13, is applicable to all but the method claims by virtue of inherent capability of the device with respect to the claimed limitations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DC/

DC



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER